1 2 3 4 5 6 7 8 9	Eugene Kim, SBN: 221753 Email: eugene.kim@streamkim.com STREAM KIM HICKS WRAGE & ALFARO, PC 3403 Tenth Street, Suite 700 Riverside, CA 92501 Telephone: (951) 783-9470 Facsimile: (951) 783-9475 Attorneys for Applicants Min-ji Kim, Pham Ngọc Hân, Ji-hye Mo, Hae-rin Kang, Hye-in Lee UNITED STATES DISTRICT COURT		
$\begin{vmatrix} 10 \\ 1 \end{vmatrix}$	NORTHERN DISTRICT OF CALIFORNIA		
11			
12 13	SAN JOSE DIVISION		
13	In re Ex Parte Application of CASE NO. 3:24-mc-80072		
15)		
16	Min-ji Kim, Phạm Ngọc Hân, Ji-hye Mo, Hae-rin Kang, Hye-in Lee DECLARATION OF MUN HUI KIM IN SUPPORT OF		
17) APPLICANTS' EX PARTE Applicants.) APPLICATION FOR ORDER		
$\begin{bmatrix} 1 & 7 \\ 18 \end{bmatrix}$	PURSUANT TO 28. U.S.C. § 1782 AUTHORIZING DISCOVERY FOR		
	USE IN FOREIGN PROCEEDINGS		
19	}		
20			
21	I, Mun Hui Kim, declare that:		
22	1. I am more than 18 years of age, am competent to testify on the matters stated in		
23	this declaration, and, except as may be otherwise stated in this declaration, have personal		
24	knowledge of the matters stated in this declaration.		
25	2. I am an attorney licensed to practice law in the Republic of Korea. I am a Partner		
26	at Yulchon LLC in Seoul, Republic of Korea.		
27	3. I have reviewed the YouTube videos at issue and my opinion below is based upon		
28	those documents or facts I have been made aware of.		
_	1		

STREAM|KIM ATTORNEYS AT LAW 3403 TENTH STREET, STE 700 RIVERSIDE, CA 92501 951-783-9470

- 4. This declaration is in support of Min-ji Kim's, Phạm Ngọc Hân's, Ji-hye Mo's, Hae-rin Kang's, and Hye-in Lee's (hereinafter collectively referred to as "Applicants" or "NewJeans members") *Ex Parte* Application for an Order Pursuant to 28 U.S.C. § 1782 Authorizing Discovery for Use in Foreign Proceedings (hereinafter "Application").
- 5. I was consulted by, and advised ADOR Co., Ltd. (hereinafter "ADOR"), a corporation established under the laws of the Republic of Korea, about filing a criminal complaint against an anonymous individual (hereinafter "Anonymous Individual") who, using the YouTube channel named 7th Grade in Middle School School ("중학교 7학년" in the original Korean language) (hereinafter "YouTube Channel") located at https://www.youtube.com/@Middle7, published multiple YouTube videos containing false and/or defamatory statements about the Applicants, members of K-pop idol group NewJeans under the management of ADOR.
- 6. Based upon the Statement of Information of Google LLC (hereinafter "Google") filed on September 7, 2023, the principal office of Google is located at 1600 Amphitheatre Parkway, Mountain View, California 94043; attached as Exhibit 1 is a true and a correct copy of the Statement of Information of Google filed on September 7, 2023 obtained from the California Secretary of State.
- 7. On March 19, 2024, the Applicants filed a criminal complaint against the Anonymous Individual with the Seoul Yongsan Police Station (hereinafter "Criminal Matter") for defamation pursuant to Article 70(2) of the Act on Promotion of Information and Communications Network Utilization and Information Protection and for the crime of insult pursuant to Article 311 of the Korean Criminal Act.
 - 8. I am the attorney of record of the Applicants in the Criminal Matter.
- 9. Article 70(2) of the Act on Promotion of Information and Communications Network Utilization and Information Protection ("정보통신망 이용촉진 및 정보보호 등에 관한 법률" in the original Korean language) provides: 1

A person who commits defamation of another person by disclosing a false fact to the public through an information and communications network purposely

English translation provided by Korea Legislation Research Institute available at https://www.law.go.kr/LSW/lsInfoP.do?lsiSeq=176679&viewCls=engLsInfoR&urlMode=engLsInfoR&chrCls Cd=010203#EJ70:0.

to disparage his or her reputation shall be punished by imprisonment with labor for up to seven years, by suspension of qualification for up to ten years, or by fine not exceeding 50 million won.

10. Article 311 of the Korean Criminal Act ("형법" in the original Korean language) provides:²

A person who publicly insults another shall be punished by imprisonment with or without labor for not more than one year or by a fine not exceeding two million won.

- 11. The Applicants have been unable to fully prosecute the Criminal Matter because the true identity of the Anonymous Individual is unknown.
- 12. Through discovery, the Applicants are seeking personal identifying information (hereinafter "PII") of the Anonymous Individual in order to identify the true identity of the Anonymous Individual to proceed with the Criminal Matter.
- 13. Based on my experience as an attorney licensed to practice law in the Republic of Korea, it is my opinion that the Applicants will not be able to proceed with the Criminal Matter without the true identity of the Anonymous Individual.
- 14. Through its US counsel, ADOR has attempted to obtain the PII from Google LLC by sending a letter via registered mail and e-mail on March 18, 2024; attached as **Exhibit 2** is a true and correct copy of the letter that ADOR's US counsel sent to Google LLC. ADOR's US counsel received an automated response from Google LLC on the same day; attached as **Exhibit 3** is a true and correct copy of the automated email that ADOR's US counsel received on March 18, 2024.
- 15. Google is not, and will not be, a party or participant to the Criminal Matter and the information or documents sought through discovery is or are held by Google in the United States, and therefore, the information or documents sought through discovery are outside the reach of the jurisdiction of a court in the Republic of Korea.
 - 16. Based upon my experience as an attorney licensed to practice law in the Republic

English translation provided by Korea Legislation Research Institute available at https://www.law.go.kr/LSW/engLsSc.do?section=&menuId=1&subMenuId=21&tabMenuId=117&eventGubun=060101&query=%ED%98%95%EB%B2%95#.

of Korea, I am not aware of any restrictions imposed by, or any policies under, the laws of the Republic of Korea limiting United States federal court judicial assistance for the purposes described herein or in the Application.

- Based upon my experience as an attorney licensed to practice law in the Republic 17. of Korea, courts of the Republic of Korea are receptive to assistance in discovery by United States federal courts, including discovery of PII of individuals publishing anonymous online statements.
- The Applicants are not attempting to circumvent any foreign proof-gathering restrictions or other policies of the Republic of Korea or the United States of America.
- The Applicants are seeking information concerning the Google Ads account, the Google AdSense account, or any other accounts that are linked to the Google account that the Anonymous Individual uses to log in to YouTube with, because based upon my experience, even where a person has not indicated their true PII in their Google account, they may have indicated their true PII in their Google Ads account, Google AdSense account, or other accounts that they login to using their Google account.
- 20. The reasons that the access log (dates, times, internet protocol (hereinafter "IP") addresses, and port numbers) of the Anonymous Individual's Google account (hereinafter the "Recent Access Log") is necessary, in addition to other PII, to identify the Anonymous Individual are:
 - (a) When an individual, the Anonymous Individual in this case, accesses the internet to access YouTube, the individual's Google account, or other Google services, the person's electronic device (e.g., laptop or smartphone) initially communicates with an ISP.³ Subsequently, the ISP communicates with a company providing online services (hereinafter the "Online Service Provider"), in our case Google which maintains the servers upon which the YouTube Videos were published, whereby the individual is able to access YouTube or Google account.
 - (b) In each communication, information such as an IP address, a port number, and a time stamp (the time when the specific communication occurred), may have been recorded, which records are commonly known as an "access log."
 - (c) The ISP assigns an IP address and a port number to the individual when

27

28

ISP means Internet Service Provider, and is an entity that provides internet access services to users, and examples of ISPs in the United States are AT&T and Verizon.

providing the individual with internet access, and therefore, the ISP is able to identify the individual using the access log because it has a record of to whom it assigned a certain IP address and port number at a certain time.

- (d) The ISP may assign a different IP address and port number every time that an individual accesses the internet, and therefore, in order to identify an individual by using an IP address and a port number, the time and the date that the person was accessing the internet using the specific IP address and port number is necessary.
- (e) In layman's terms, an IP address is the street address of the individual, while the port number is the room number.
- (f) Initially, a victim of an unlawful act on the internet, such as the Applicants, does not know the ISP of the wrongdoer, and therefore, the victim needs the Online Service Provider to disclose the access log in its possession, and the Recent Access Log sought by the subpoena is seeking this information from Google.
- (g) By obtaining the IP address from the Online Service Provider, the victim is able to identify the ISP used by the wrongdoer, because IP addresses are owned by ISPs, and the IP addresses owned by an ISP is publicly available information.
- (h) By identifying the ISP used by the wrongdoer, the victim can provide the access log (the IP address, the port number, and the timestamp) to the ISP and request information such as the name and the address of the wrongdoer from the ISP to identify the wrongdoer in order to serve the wrongdoer with legal process.
- (i) In many cases, the Online Service Provider does not have accurate PII that is sufficient to identify the true identity of the wrongdoer because the Online Service Provider does not require the wrongdoer to record his or her true name, address, e-mail address, telephone number, or any other PII, which information must each be voluntarily provided by the wrongdoer.
- (j) Where the wrongdoer created the Google account to damage the reputation of the victim, most of the information obtained about the Google account may be fictitious because the PII is voluntary.
- (k) Therefore, in many cases, the access log obtained from the Online Service Provider is the information that will allow the victim to identify the true identity of the wrongdoer.

- (l) Ideally, if the Online Service Provider keeps a complete access log indefinitely, a victim can more readily identify the wrongdoer.
- (m) However, in practice, a sufficient access log is not available because (i) the Online Service Provider does not record a complete access log for all communications, (ii) the Online Service Provider only keeps the access log for a short period of time (usually for three to six months); or, (iii) a wrongdoer can use special anonymization computer programs to prevent the victim from identifying the wrongdoer through the use of the access log.
- (n) Because the access log is deleted by the Online Service Provider after several months, the more recent access log is critical.
- (o) The wrongdoer may be accessing the internet and the Online Service Provider using the anonymization computer program at times, but may have the program off at other times.
- (p) For the foregoing reasons, the more recent access log for a reasonable period of time is necessary because (i) the Online Service Provider may have not recorded a complete access log if discovery is limited to a short period of time, (ii) the older access log has likely been deleted, or (iii) there is a possibility that the wrongdoer may have had his or her anonymization computer program turned off.
- (q) If discovery is allowed only for a short period of time, and for only the older access log, for the foregoing reasons, it will be less likely that the victim will be able to obtain information sufficient to identify the true identity of the wrongdoer.
- (r) Therefore, for the foregoing reasons, it is reasonable to allow discovery of the recent access log, and to not limit discovery to the period at or about the time that the unlawful statement was published.
- 21. In order for the Applicants to identify the Anonymous Individual through the ISP using an IP address and a port number, both the IP address and the corresponding port number and timestamp is necessary.
- 22. Without the corresponding timestamp, an ISP in the Republic of Korea will be unable to pin-point the wrongdoer that was using the IP address at a certain point-in-time.
- 23. Additionally, where the port number is not disclosed, certain ISPs will be unable to pin-point the wrongdoer that was using the IP address, even with a timestamp.

- 24. A port number is only used in conjunction with an IP address to identify the ISP of the wrongdoer and is used by an ISP to pin-point who was using a certain IP address and a certain corresponding port number on a specific date and time, and a port number does not intrude upon a person's privacy.
- 25. A timestamp only shows when a person accessed their online account using a specific IP address and port number, and does not disclose what the person was doing using their online account, and therefore, discovery of a timestamp only minimally intrudes upon a person's privacy; the evidentiary value of a timestamp allowing the victim to identify the wrongdoer far outweighs any privacy issues.
- 26. Finally, any PII (other than the Recent Access Log) registered, at any time, with the wrongdoer's Google account is necessary, because, based upon my experience as an attorney licensed to practice law in the Republic of Korea, the Anonymous Individual may have not planned to damage the Applicants until a time near to when the subject online statements were made, and as such, it is more likely that the Anonymous Individual may have used his or her true identity near to the time when the online statements were published.
- 27. Recent PII is also relevant and necessary, because the Anonymous Individual may not have changed PII that is not displayed publicly. The discovery of PII requested is not unduly intrusive, because this information is narrowly tailored to discover the true identity of the Anonymous Individual and is not seeking irrelevant information.
- 28. Based upon my experience, where an online account is used for a legitimate purpose, PII is only changed occasionally, and because this information is stored by Google in the ordinary course of its business, the burden placed upon Google in disclosing this information is minimal.
- 29. Based upon the foregoing, the information and documents sought from Google is highly relevant and crucial to the Applicants' criminal case in the Republic of Korea and is narrowly tailored and limited to the discovery of information necessary to identify the true identity of the Anonymous Individual against whom the criminal case is filed.

Pursuant to 28 U.S.C. § 1746(1), I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

1	
1 2	Executed on March $\frac{27}{}$, 2024
3	
4	Main Hai Lim
5	Mun Hui Kim
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	8
STREAM KIM ATTORNEYS AT LAW 3403 TENTH STREET, STE 700 RIVERSIDE, CA 92501 951-783-9470	DECLARATION OF MUN HUI KIM

State

BA20231413505



STATE OF CALIFORNIA Office of the Secretary of State STATEMENT OF INFORMATION LIMITED LIABILITY COMPANY

California Secretary of State 1500 11th Street Sacramento, California 95814 (916) 653-3516 For Office Use Only

-FILED-

File No.: BA20231413505 Date Filed: 9/7/2023

Entity Details	
Limited Liability Company Name	GOOGLE LLC
Entity No.	201727810678
Formed In	DELAWARE
Street Address of Principal Office of LLC	
Principal Address	1600 AMPHITHEATRE PARKWAY MOUNTAIN VIEW, CA 94043
Mailing Address of LLC	
Mailing Address	1600 AMPHITHEATRE PARKWAY MOUNTAIN VIEW, CA 94043
Attention	Attn: Legal Dept.
Street Address of California Office of LLC	
Street Address of California Office	1600 AMPHITHEATRE PARKWAY MOUNTAIN VIEW, CA 94043
Manager(s) or Member(s)	
Manager or Member Name	Manager or Member Address
XXVI Holdings Inc.	1600 Amphitheatre Parkway Mountain View, CA 94043
Agent for Service of Process	
California Registered Corporate Agent (1505)	CORPORATION SERVICE COMPANY WHICH WILL DO BUSINESS IN CALIFORNIA AS CSC - LAWYERS INCORPORATING SERV Registered Corporate 1505 Agent
Type of Business	
Type of Business	TECHNOLOGY COMPANY
Email Notifications	
Opt-in Email Notifications	Yes, I opt-in to receive entity notifications via email.
Chief Executive Officer (CEO)	
CEO Name	CEO Address
Sundar Pichai	1600 Amphitheatre Parkway Mountain View, CA 94043

Labor Judgment

No Manager or Member, as further defined by California Corporations Code section 17702.09(a)(8), has an outstanding final judgment issued by the Division of Labor Standards Enforcement or a court of law, for which no appeal is pending, for the violation of any wage order or provision of the Labor Code.

Case 5:24-mc-800 **Exhibit** Document 1-1 Filed 03/27/24 Page 10 of 13

Electronic Signature				
By signing, I affirm under penalty of perjury that the information herein is true and correct and that I am authorized by California law to sign.				
Kenneth H. Yi	09/07/2023			
Signature	Date			



Office: (951) 783-9470 Fax: (951) 783-9475 eugene.kim@StreamKim.com

March 18, 2024

VIA E-MAIL AND EXPRESS MAIL

Google LLC
Attn: Legal Department, Custodian of Records
1600 Amphitheatre Parkway
Mountain View, CA 94043
internationalcivil@google.com

Re: Request for Identification of Anonymous YouTuber in connection with Korean Criminal Matter

Dear Google Legal Department:

On behalf of our clients ADOR and members of NewJeans ("Client"), we are seeking information for purposes of using it in a foreign criminal matter. Specifically, we ask for Google LLC's assistance to identify an anonymous YouTuber who has publicly defamed and/or made false statements about members of K-pop idol group NewJeans.

By way of background, an anonymous individual using the YouTube channel named 7th Grade in Middle School ("중학교 7학년" in the original Korean language) ¹ with approximately 12,700 subscribers has uploaded around 33 defamatory videos regarding our Client between September 10, 2022 and March 6, 2024. These videos have recorded over 13,800,000 views as of today. The false and/or defamatory statements made in the videos have inflicted and continues to inflict significant reputational damage on our Client.

As part of actively pursuing a criminal action against the anonymous individual in South Korea, our Client must identify the anonymous individual in order to fully prosecute the case. Our Client's Korean counsel believes the anonymous individual has committed defamation pursuant to Article 70(2) of the Act on Promotion of Information and Communications Network Utilization and Information Protection and a crime of insult pursuant to Article 311 of the Korean Criminal Act.

We ask for your assistance in identifying the following information ("Requested Information") to aid in the prosecution of this Korean criminal matter:

- 1. Google account(s) and YouTube account(s) that are used to sign in to or that are registered to, linked to, or otherwise associated to the YouTube channel named 7th Grade in Middle School ("중학교 7학년" in the original Korean language) that is located at: https://www.youtube.com/@Middle7.
- 2. The following information relating to the individual(s) owning or operating the Google account(s) and YouTube account(s) mentioned in (1) above:
 - a. Names
 - b. Address (including physical, billing and shipping address)
 - c. Email Address (including recovery email address)
 - d. Telephone Numbers (including recovery number

This YouTube channel can be accessed at https://www.youtube.com/@Middle7

March 18, 2024 Request for Identification of Anonymous YouTuber in connection with Korean Criminal Matter Page $\,2\,$ of $\,2\,$

Please let us know by March 25, 2024, whether Google will voluntarily provide the Requested Information. If we do not receive a positive response by this date, our Client will file a Section 1782 discovery application in the Northern District of California to obtain discovery from Google LLC.

Should you have any questions or need further clarification, please contact me by email at eugene.kim@streamkim.com.

Sincerely,

Eugene Kim

Stream Kim Hicks

Wrage and Alfaro, P.C.

1 (951) 783-9470

eugene.kim@streamkim.com

From: <u>lis-noreply@google.com</u>
To: <u>Janet Velazquez</u>

Subject: [8-5601000035701] Autoresponse to IntlCiv **Date:** Monday, March 18, 2024 2:11:27 PM



This is the first email you've received from this external sender.

Do not click links or open attachments unless it is an email you expected to receive.

Hello,

Google does not respond to informal requests for non-public information about our users. The information you are requesting, to the extent it exists, is subject to data protection laws.

In accordance with those laws, it is Google's policy to only provide subscriber information pursuant to properly served, valid legal process.

To learn more about serving Google Ireland Limited or Google LLC with civil legal process that requests user data, please see our help center article at https://support.google.com/faqs/answer/6151275?hl=en.

If you are an attorney working on behalf of a Google user, please initially refer to the resources identified above. We will respond to any attorney letters in the order in which they are received. Further reminder notices will not be necessary and may further delay our ability to respond to your request.

Additionally, if your message relates to questions about Google products and policies, we are generally unable to answer them and encourage you to visit our help pages at http://support.google.com/ and read through the information available.

Our team also does not process, forward, or respond to requests for the removal of content from Google's services. To submit a removal request, please complete the online webform available at https://support.google.com/legal. To follow-up on a previously submitted removal request, or to add an attorney letter to your submission, please respond to the confirmation email of the removal request, without changing the subject line.

Regards,

Google

Legal Investigations Support